

**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA**

THE PENNSYLVANIA STATE  
UNIVERSITY,

Plaintiff and  
Counterclaim Defendant,

v.

VINTAGE BRAND, LLC; et al.,

Defendant and  
Counterclaim Plaintiff.

Case No. 4:21-cv-01091-MWB

JURY TRIAL DEMANDED

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**PLAINTIFF THE PENNSYLVANIA STATE UNIVERSITY’S ANSWER  
AND AFFIRMATIVE DEFENSES TO DEFENDANT  
VINTAGE BRAND, LLC’S COUNTERCLAIMS**

Plaintiff and Counterclaim Defendant The Pennsylvania State University (“Penn State”), by and through its undersigned counsel, hereby submits its Answer and Affirmative Defenses to Defendant and Counterclaim Plaintiff Vintage Brand, LLC’s (“Vintage Brand”) Counterclaims (ECF 72) (“Counterclaims”) in this action. Penn State denies all allegations in Vintage Brand’s Counterclaims not specifically admitted below. In responding to the Counterclaims, Penn State uses the headings employed by Vintage Brand strictly as a convenience to the Court, and does not admit any allegation made in, or inference suggested by, such headings. Penn State answers the numbered paragraphs of the Counterclaims as follows:

**The Parties**

1. Penn State is without knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 1 and therefore denies them.

2. Admitted.

### **Jurisdiction and Venue**

3. Penn State admits that this Court has subject matter jurisdiction over the Counterclaims generally under 28 U.S.C. §§ 1331, 1338 and 1367; however, Penn State denies that the Counterclaims set forth valid or meritorious claims. To the extent not expressly admitted, Penn State denies the remaining allegations of Paragraph 3.

4. Admitted.

5. Denied.

### **COUNT I**

#### **Cancellation of Registration Nos. 1,276,712 & 5,877,080** **(Registration of Commonwealth of Pennsylvania's Coat of Arms)**

6. Penn State incorporates its responses to all preceding paragraphs as if fully set forth herein.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. To the extent the Counterclaims quote or cite documents or other materials, those documents and materials speak for themselves. Penn State specifically denies that statements set forth on a website can be legally attributed to The Pennsylvania State University. Penn State admits that Exhibit A purports to be a reproduction of the webpage quoted in Paragraph 11. Penn State denies each and every remaining allegation of Paragraph 11.

12. Denied.

13. Denied.

14. This paragraph contains a legal conclusion to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

## **COUNT II**

### **Cancellation of Registration Nos. 5,766,698 & 5,877,080**

#### **([Alleged] Failure to Function / [Allegedly] Merely Ornamental)**

15. Penn State incorporates its responses to all preceding paragraphs as if fully set forth herein.

16. Admitted that Registration No. 5,766,698 was obtained by Penn State following the filing of Application Serial No. 87/639,315 on October 10, 2017. The remaining allegations in this paragraph are denied.

17. This paragraph contains a legal conclusion to which no response is required. Registration No. 5,766,698 speaks for itself, and Penn State denies any allegations in Paragraph 17 that are inconsistent therewith.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

### **[PRAYER FOR RELIEF]**

Penn State denies all factual assertions contained in Vintage Brand's prayer for relief and further denies that Vintage Brand is entitled to any relief in this action.

### **AFFIRMATIVE DEFENSES**

#### **FIRST DEFENSE**

Vintage Brand has failed to state a claim upon which relief can be granted.

#### **SECOND DEFENSE**

The Counterclaims fail because of Vintage Brand's unclean hands.

#### **THIRD DEFENSE**

The Counterclaims are barred in whole or in part under the applicable statute of limitations and/or the doctrine of laches.

#### **FOURTH DEFENSE**

The Counterclaims are barred in whole or in part because Vintage Brand has suffered no provable damages in this case.

#### **SIXTH DEFENSE**

Count II of the Counterclaims fails as an impermissible collateral act to the extent Penn State already owns incontestable registrations under 15 U.S.C. § 1065 covering identical or substantially similar marks for identical goods.

#### **SEVENTH DEFENSE**

Count II of the Counterclaims fails because the trademark registrations challenged under Count II are inherently distinctive or have acquired distinctiveness pursuant to 15 U.S.C. § 1052(f).

#### **NINTH DEFENSE**

Penn State reserves all remaining defenses.

Dated this 7th day of December, 2022.

Respectfully submitted,

**MCGUIREWOODS LLP**

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## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing Answer and Affirmative Defenses with the Clerk of the Court using the CM/ECF system on this 7th day of December, 2022, which constitutes service on Defendants pursuant to Fed. R. Civ. P. 5(b)(2)(E):

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